

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1209 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

B C WADHWANA

Versus

DIRECTOR GENERAL OF POLICE

Appearance:

MS SADHANA SAGAR for Petitioner
MS VIDHATRY M. PAREIKH ASSTT.GOV.T.PLEADER
for Respondent No. 1, 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 23/07/98

ORAL JUDGEMENT

Rule.

Though the case is listed for fixing the date of final hearing to day, and as both the parties are ready to argue the matter as similar question has already been decided by this Court in Special Civil Application No. 4200 of 1993 and Special Civil Application No. 1235 of 1994. Thus, this case is finally heard and is being

decided to day. Heard the learned counsel for the parties and perused the relevant papers.

2. This petition has been filed for a direction to the respondents to absorb the petitioner on the regular post of Class IV employee in any offices under the control of the respondents with all consequential benefits.

3. The petitioner was temporarily appointed a part time sweeper by an order dt. 19/5/1983. Since then he is still working on the post of Class IV employee as a part time sweeper in the Department of the respondent no.2. The petitioner was given the appointment initially for one hour only in a day which was extended by the respondents to four hours in a day and the petitioner is continuously working as a part time sweeper since last 15 years. By the Circular No. PTE-1080 -288-CH, dt. 26th December, 1980, the Government of Gujarat, Finance Department, Gandhinagar (Annexure "C") has directed the Heads of the departments to make efforts as per prescribed recruitment Rules and procedure for filling in the posts from the part time employees who have continuously worked for three years and to absorb such incumbents in regular posts that may be available under his control and to replace the incumbent by a fresh part time employee. The General Administrative Department, Government of Gujarat, Gandhinagar has also issued a circular dt. 15th October, 1992, directing all the concerned officers to strictly implement the guidelines issued earlier from time to time for appointing the part time sweepers on regular post of peon in the cadre of class IV on their completion of ten years as part time employees. It is suggested that as the petitioner has already worked for more than fifteen years as part time sweeper, the petitioner is entitled to be absorbed as peon as per that circular.

4. In Special Civil Application No. 4200 of 1993, the services of the petitioner of that case was terminated and this court by the order dt. 4th November, 1993, has quashed the order of termination and directed the respondent to absorb the petitioner as part time sweeper in the regular cadre of Class IV employee on the availability of vacancy in accordance with law, without raising any technical objections regarding age or requisite qualifications; if there was no vacancy of full time sweeper, the petitioner was directed to be absorbed in the cadre of peon, if he is eligible for the said post in accordance with recruitment rules irrespective of age bar. In Special Civil Application No. 1235 of 1994,

this court by the order dt. 24th September, 1997, in terms directed that the respondent shall consider the case of the petitioner for regularisation as Class IV in accordance with law within a period of three months from the date of receipt of that order. In that case, the petitioner was regularised as Class IV employee, then he shall be entitled for all the consequential benefits for the same from the date of filing of that special civil application. In case the claim of the petitioner for regularisation is not accepted, then the respondent was directed to pass a reasoned order and send the copy thereof to the petitioner by registered post and the petitioner was given a liberty of revival of that special civil application in case of difficulty.

5. In the case on hand, it is the respondents who have not filed any affidavit in reply. There is nothing on record to show that there was no vacancy of full time sweeper in the cadre of Class IV employee for absorption or regularisation. It is also not disputed that the petitioner is still working as part time sweeper continuously for a period of 15 years. As such, as per circulars, the petitioner ought to have been absorbed in the cadre of Class IV employee, much before the filing of this writ petition. In the facts and circumstances of the case, the petitioner is entitled to be absorbed and regularised as full time sweeper in the regular cadre of Class IV employee, without considering any technical objection regarding age or requisite qualifications with retrospective effect from the date of the filing of this petition.

6. Before parting with the present matter, it is pertinent to note that the Heads of the different departments are not following the Government Circulars which have been annexed with the petition in absorbing part time sweepers as full time sweepers or peons as the case may be. In the prevailing circumstances, the Government of Gujarat is directed to absorb and regularise all the part time sweepers who are working in its different departments as full time sweepers in the cadre of Class IV employee within three months. The Registrar is directed to send a certified copy of this judgment to the Chief Secretary of Gujarat Government for strict compliance within fortnight.

7. Accordingly this special civil application is allowed. The respondents are directed to absorb the petitioner as full time sweeper in the regular cadre of Class IV employee with all consequential benefits from the date of filing of this petition i.e. 27th January,

1994. Rule is made absolute.

(ccs)